REMARKS

This amendment is presented as an amendment after allowance under 37 CFR 1.312 in order to address certain problems brought to applicant's attention by the issuance of a first action Notice of Allowance early in December, 2003. These problems are three-fold, namely, 1) the amendment of the specification to incorporate the subject-matter of certain original claims referred to in the original specification by specific number, 2) the replacement of two of the allowed claims with two new claims directed to subject-matter that was omitted from the claims of the preliminary amendment and is considered by the applicant to have some importance not appreciated by the undersigned attorney at the time of the drafting of the preliminary amendment, and 3) the correction of a few errors in the original text of the specification and several claims.

Applicant's attorney has attempted on several occasions on February 11 and 12, 2004, to contact the Examiner by telephone to briefly make the Examiner aware of the above problems and applicant's intention to address the same by this Rule 312 amendment but the telephone line has been "busy". Further efforts to do this will be made but applicant's attorney is faced with the urgent need to submit the amendment as early as possible and feels compelled to file the paper prior to any telephone conversation. In further call just completed, the Examiner's answering machine was reached and a brief message summarizing the substance of the oreceding paragraph was left.

Preliminarily, applicant's attorney in drafting the amendatory instructions for making the above changes has endeavored to follow as closely as possible the instructions set forth in 35 USC 1.121, as they are understood. Accordingly, specification changes have been identified by reproducing entire paragraphs in which they appear, the paragraphs being specified by page and line locations. As to the claims, an amended (marked-up) version of only those claims in which changes are instructed is being presented, pursuant to 35 USC 1.21 (c)(2), as presently understood. In addition, a clean version of the texts of the complete claim schedule, including the amended and new claims (so identified) in their final amended form incorporating the amendatory changes, is provided, pursuant to 35 USC 1.121(c)(3), as presently understood. In the latter, the re-numbering of the claims in the Examiner's amendment results in a complication in complying with the requirement of 35 USC 1.121(c)(1) of a listing of all claims, past and present, in numerical order. In the spirit of full compliance with the latter requirement, in the complete "clean" version, the canceled original claims are being identified by their original numbers while the pending claims follow the new enumeration of the Examiner's amendment, with an explanatory note to that effect appearing at the beginning. In the "marked-up" version, the amended claims are given their "new" numbers per the Examiner's amendment with their previous numbers from the Preliminary Amendment shown in parenthesis, again with an explanatory note.

Regarding the proposed amendments to the specification, in drafting the original specification himself, the applicant as a

time-saving measure adopted the expedient of referring to certain original claims as an indirect disclosure of various features of the invention rather than describing those features directly in the body of the specification in the usual manner. In other words, applicant used references to claims by number, which had already been formulated, as a "short-cut" measure for disclosing in the specification the subject-matter of the claims in question. While this approach to the preparation of a specification is unorthodox, there appears to be no reason in principle why it was unacceptable.

However, with the replacement of the original claims in their entirety in the Preliminary Amendment and the deletion from the specification by the Examiner in the Examiner's Amendment of the references to any of the original claims, a potential critical problem has arisen due to the consequential absence from the specification as allowed (and as would be issued in the ultimate patent) of support for any limitations directed to the features of the claims so referred to. To take a hypothetical example, if in some subsequent proceeding, say, a re-examination proceeding, a broad claim were to be found to be unpatentable, it could be impossible to turn to the specification for narrowing limitations that would pass the test of patentability and thereby salvage some degree of protection for the applicant.

In order to resolve this problem, the specification is being amended above to incorporate the exact original texts of the various claims originally referred to merely by number. In this way, the intent and, indeed, the substance of the original

specification will be preserved to be available for support for particular features if the need should ever arise.

It is acknowledged that this line of amendment is unusual but it is believed to be permissible under the applicable practice and applicant's attorney can see no other alternative solution to this problem. Given that the claims in question were identified by specific numbers in the original specification and the original texts of such claims are being incorporated verbatim into the specification following the numerical references, applicant's attorney cannot see how any question of new matter could conceivably be created. All that is being done is to make explicit what was previously implicit.

In order to provide continuity for the claim texts, the original references in the specification to the claims by number which were deleted by the Examiner in the Examiner's amendment are being reinstated. This is not intended as any criticism of the Examiner's action which was quite understandable under the then existing circumstances. However, in as much as the deleted identifications of the claims in question were a part of the original disclosure, it is believed that applicant is certainly entitled to restore them to their original status where they can serve as an introduction to the incorporation of the claim texts.

As to the new claims 176 and 177 (re-numbered in the final schedule as 71 and 72), they are intended to cover with different wording generally the same features as original claims 59 and 62. The latter features are considered somewhat important by applicant, a fact not known by applicant's attorney when the Preliminary

Amendment was being prepared. In addition, they relate to material "B" and thus provide somewhat of a "balance" to a number of preceding claims which are all concerned with material "A". In pattern or format, the new claims follow claim 156 (re-numbered as allowed claim 51) in that they deal with a modification of one of the starting materials ("A" or "B") to adapt it for the extrusion followed at the end of the extrusion to restoration of the material to its original condition as desirable for the extruded product. Given that no objection was raised again claim 156, it would appear that the new claims would be equally free of objection. To maintain constant the total number of pending claims, two less significant claims 139 and 153 (re-numbered as 34 and 48) are being canceled.

Turning now to the corrections, they will be explained in turn. As to page 1, line 9+, a patent number is given an obvious correction and the sentence structure of sub-paragraph "a" is changed to be consistent with that of sub-paragraph "b".

On page 5, line 11+, obviously missing words are being added.

On page 6, line 29, the plural form is obviously needed.

On page, 7, line 2, there are no "figs. 4a and b" while --figs. 6 and b-- fit the contextual references to materials "A1" and "B1" while "fig. 4" does not. Later on on page 7, line 9, "B1" is being changed to --B1'-- to agree with the early mention of "B2'".

On page 8, line 24, there is no material "D" in the description and --B-- is obviously needed to agree with "B'".

In the last line (32) of this page 8, --is-- is needed as a verb to replace "as".

Similarly on page 10, line 4, --is-- is needed as a verb to replace "it" and later on at line 10 of this page, --or-- needs to be inserted to complete the alternative. Then, at line 16, a patent number error is corrected to agree with the correct number see at line 30 of the same page 10.

On page 12, line 24, the "knives" referred to do not appear in "fig. 6a" but in --fig. 7a-- and this is being corrected.

On page 13, at the end of line 18, "is" should obviously be --in--. On the same page, line 27, "fig. 7a" does not show the "segmental streams" referred to in original claim 75 but --figs. 6a and b--.

The complete sentence bridging pages 13 and 14 and the following two sentences contain erroneous material designations, according to the applicant, but since there is no clear internal basis for a correction, these complete sentences are being deleted. They relate to a functional result which is not material to the description. With the deletion, the word "also" in the following sentence becomes redundant and is being dropped.

On page 14, line 23, the reference to "more fragile" makes no sense and is being removed.

On page 16, line 18+, a reference to "B" is being added to complete the comparison and the effect of the "gas" is clarified. Later at line 22, "more fragile" makes no sense and is deleted and the sentence structure is being simplified.

On page 21, line 20, the basic "terms" are being related to the drawings rather than the "claims" to avoid any confusion.

On page 22, line 4, there are no "figs. 2a and b" (only fig. 2) and the continuing reference should be to --figs. 1 a and b-- (cf. page 21, line 13 at the end).

On page 25, line 3, the correct "conjugent" is being substituted (cf. line 5).

On page 28, line 17, in "fig. 7b", numeral -22- refers to the "belt" (23 designating a flap) and in line 19, the obviously incorrect "flab" is being changed to --flap--.

On page 33, line 19, it is fig. 8d that shows the "valve arrangement", not "fig. 9" which shows the knives and this is being substituted.

On page 43, line 23, the correct temperature for the yield point of material B2' is 3° C, not "30° C" as stated and this is being changed. 30° C is clearly inconsistent with the other yield point temperatures of this example, i. e. -15° C and -1.5° C for materials A' and B1' and if the yield point was as stated for material B2' at 30° C, it would presumably be frozen solid at the stated extrusion temperature of +1° C. In any event, the reference is to a physical property which should be correctly described as a matter of fact.

As to the claim corrections, in claims 1 (previously 106), 5 (previously 110), 20 (previously 125) and 24 (previously 129), all of the parenthetical abbreviations for the yield points are being deleted; one such reference is in error and all are superfluous and could cause confusion.

In claim 3, last line, an obvious typographical error is corrected.

In claim 43, last line, a previous deletion (in brackets) is being extracted.

In claim 44, third line from end, the alphabetical designation --B-- for the material is added for clarification and easier association with other claims.

Applicant's attorney apologizes for the length of this amendment, which is necessitated in part by the requirements of 35 CFR 1.121, and, in particular, for any extra burden it may impose upon the Examiner. However, the incorporation into the disclosure of any patent which may issue of the details of the claims originally referred to by number alone is considered of real importance by the applicant and the Examiner's cooperation in recommending the approval and entry of this amendment is respectfully requested. **If the Examiner should have any questions or if difficulties are encountered in entering this amendment, the Examiner is requested to contact the undersigned attorney be telephone so that the matter can be discussed.**

Respectfully submitted,

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AMENDMENTS TO THE CLAIMS - MARKED-UP VERSION

(Note: Claim numbers are as re-numbered in the Examiner's Amendment with the previous number in parenthesis.)

--1. (106) (Currently Amended) A three-dimensional food product, elongated in at least the z-dimension and consisting of at least two components A and B which have been coextruded to become interspersed with each other, in which a plurality of cells of component A are surrounded at least in the xz plane by at least one component B which forms cell walls surrounding the A component, wherein said B component is a solid (including a viscoelastic solid) at 20° C, the cells of component A are arranged in at least two mutually distinct rows extending generally in the z direction, each said row of cells being separated from each adjacent row by a generally continuous in the z direction boundary cell wall of said B component, and either a) component A is a fluid having no compressional yield point at 20° C or is a solid having plastic, pseudoplastic or viscoelastic consistency at 20° C and a compressional yield point ~~(YPB_{20})~~ at 20° C which is less than 0.5 x the compressional yield point of B at 20° C ~~(YP_{B20})~~, or b) component A is an expanded material containing at least 50% by volume gas.--

--3. (108) (Currently Amended) A product according to claim 1 (106) in which there are two different B components B_1 and B_2 and the boundary cell wall is formed of said first component B_1 and the product has bridging cells walls branching from said boundary cell wells and extending at least part way in a generally x direction towards the adjacent boundary cell wall, the bridging cell walls being ~~form~~ formed at least in part of component B_2.--

--5. (110) (Currently Amended) A product according to claim 4 (109) in which the yield point of component B_1 at 20° C ~~($YP_{B1(20)}$)~~ is in the range of 0.1 to 0.5 of the yield point of B_2 at 20° C ~~(YPBP(20)~~.--

--20. (125) (Currently amended) A product according to claim 1 (106) wherein component A in the final form of the product at 20° C is a plastic, pseudoplastic or viscoelastic material having a compressional yield point ~~YP_A~~ lower than 1000 g cm^{-2}.

--24. (129) (Currently Amended) A product according to claim 1 (106) in which component B including a component B reinforced with solid particles selected from the group consisting of short fibres, or grain-, shell- or film-pieces or flakes, has a yield point ~~YP_B~~, of at least 200 g cm^2.--

--43. (148) (Currently amended) A product according to claim 41 (146) in which component A and component B are selected from the group consisting of ~~{consist of one of}~~ the following combinations:

a. dark chocolate/ light chocolate

b. chocolate/marzipan

c. chocolate/caramel

d. two differently coloured edible gums or fruit gels.

--44. (149). (Currently Amended) A method of manufacturing by coextrusion of a plurality of extrudable edible components in an extrusion die a solid food product in which the components are extruded in a z-direction from the extrusion die and exit therefrom, and in which at least one extrudable component A' is formed into a flow through a channel and an extrudable component B'

is formed in a flow through a channel, the flow of B' being in generally an x direction transverse to said z direction adjacent the flow of A', in which after exiting from said die, the flows of A' and B' are regularly divided generally in said x- direction by a dividing member to form at least two rows of flows of A' and B' separated in the x-direction, in each of which rows the flows of A' and B' are segmented in the z direction with a segment of flow of B' being joined upstream and downstream to each segment of flow of A', whereby B' segments are interposed between adjacent A' segments in the z direction and in which adjacent rows are joined to one another along their yz faces, and wherein after the joining of the segmental flows B' is transformed to a normally solid material B having a compressional yield point which is at least twice that of B'.--

Cancel claims 34 (139) and 48 (153) and add the following new claims:

71. (176) (New) A method according to claim 44 (149) wherein component A' has a consistency that is undesirably soft for ready extrusion but is at a desirable level in the final product and component A' is adapted to undergo at least partial solidification upon cooling, which comprises the further steps of prior to the introduction of said material A' to the flow channel therefor, subjecting material A' to sufficient cooling to partially solidify at least a major portion thereof into the form of suspended particulate solids whereby the consistency of material A' is modified for ready extrusion; and at the end of the extrusion, applying to the extruded product sufficient heat to melt said

suspended particulate solids therein to thereby restore the desirable consistency of component A' in the final product.

72. (177) ((New) A method according to claim 44 (149) which comprises the further steps of prior to the introduction of component A' into the flow channel therefor, dispersing through said component A' a polymer that has the effect of enhancing the flow consistency of said component A' during the extrusion and is susceptible to treatment to depolymerize the same; and at the end of the extrusion subjecting the extruded product to treatment to at least partially depolymerize said polymer to thereby remove from the final product the consistency-enhancing effect of said component A'.